

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Andres Gomez,

Plaintiff,

v.

**David P. Como dba Napa Valley
Real and Vineyards;**

Defendants.

Case No. 3:21-cv-09574-EMC

**First Amended Complaint for
Damages and Injunctive Relief
for Violations of:** American's
With Disabilities Act

**NOT RELATING TO A
CONSTRUCTION-RELATED
BARRIER AS DEFINED IN CAL.
CIV. CODE § 55.3**

Plaintiff Andres Gomez ("Plaintiff") complains of David P. Como dba Napa Valley Real Estate and Vineyards; ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a visually-impaired individual and a member of a protected class of persons under the Americans with Disabilities Act. Plaintiff uses Talkback or similar software to navigate websites and applications on

1 electronic devices. Plaintiff is legally blind¹ and cannot use an electronic
2 device without assistance of screen-reader software (“SRS”).

3 2. Defendant David P. Como dba Napa Valley Real Estate and Vineyards
4 (“Napa Valley Real Estate and Vineyards”) owned or operated Napa Valley
5 Real Estate and Vineyards located in Napa County in March 2021 and July
6 2021.

7 3. Defendant Napa Valley Real Estate and Vineyards owns or operates
8 Napa Valley Real Estate and Vineyards located in Napa County currently.

9 4. Defendant Napa Valley Real Estate and Vineyards owned or operated
10 Napa Valley Real Estate and Vineyards website, with a root domain of:
11 <https://www.davidcomo.com> and all related domains, sub-domains and/or
12 content contained within it, (“Website”) in March 2021 and July 2021.

13 5. Defendant Napa Valley Real Estate and Vineyards owns or operates
14 Napa Valley Real Estate and Vineyards Website currently.

15 6. Plaintiff does not know the true names of Defendants, their business
16 capacities, their ownership connection to the property and business, or their
17 relative responsibilities in causing the access violations herein complained of,
18 and alleges a joint venture and common enterprise by all such Defendants.
19 Plaintiff is informed and believes that each of the Defendants herein, is
20 responsible in some capacity for the events herein alleged or is a necessary
21 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
22 the true names, capacities, connections, and responsibilities of the Defendants
23 are ascertained.

24
25
26 ¹ Plaintiff uses the terms “visually-impaired” or “blind” interchangeably to
27 refer to individuals, including himself, who meet the legal definition of
28 blindness. (visual acuity of 20/200 or worse.) Some individuals who meet
these criteria have no vision, others have limited vision.

1 **JURISDICTION & VENUE:**

2 7. The Court has subject matter jurisdiction over the action pursuant to 28
3 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
4 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”)

5 8. This court has supplemental jurisdiction over Plaintiff’s non-federal
6 claims pursuant to 28 U.S.C. § 1367 because Plaintiff’s Unruh claims are
7 formed from the same case and/or controversy and are related to Plaintiff’s
8 ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

9 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). Defendant
10 is subject to personal jurisdiction in this District due to its business contacts
11 with the District, and a substantial portion of the complained of conduct
12 occurred in this District.

13
14 **FACTUAL ALLEGATIONS:**

15 10. Plaintiff is a legally blind person and a member of a protected class
16 under the ADA. Plaintiff is proficient with and uses SRS to access the internet
17 and read internet content on electronic devices.

18 11. Plaintiff cannot use electronic devices without the assistance of screen
19 reader software (“SRS”).

20 12. Napa Valley Real Estate and Vineyards operates privileges or services
21 out of a physical location in California. These services are open to the public,
22 places of public accommodation, and business establishments.

23 13. The Website is a nexus between The Napa Valley Real Estate and
24 Vineyards customers and the terrestrial based privileges or services offered by
25 Napa Valley Real Estate and Vineyards. Napa Valley Real Estate and Vineyards
26 has a physical office that upon information and belief is open to the public and
27 is located at 1817 Jefferson St., Napa, CA. This address is listed among their
28 contacts on their own website, and based on information and belief, there is a

1 sign on the building stating to the public that it is a real estate office.

2 14. Napa Valley Real Estate and Vineyards offers websites and digital
3 booking as some of the facilities, privileges, and advantages offered by
4 Defendants to patrons of Napa Valley Real Estate and Vineyards in connection
5 with their patronage at Napa Valley Real Estate and Vineyards.

6 15. Among the services offered include: details about the houses and Napa
7 Valley Real Estate and Vineyards itself, location and contact information; Real
8 Estate policies; information about houses on sale and rent, deals and
9 promotions without any ambiguity as to the amenities that would be available
10 to the patron.

11 16. Plaintiff wished to access Defendant's services in order to gather facts
12 about the real estate market in Napa.

13 17. Plaintiff visited the Website in March 2021 and July 2021 with the
14 intent get information about houses on sale in Northern California.

15 18. When Plaintiff attempted to navigate the Website, Plaintiff encountered
16 numerous accessibility design faults that prevented him from navigating the
17 site successfully using SRS. Investigation into his experience revealed barriers,
18 including, but not limited to:

- 19 a. Images on the website lack a text equivalent readable by
20 SRS.
- 21 b. The visualization of the webpage contains impermissibly
22 low contrast enabling differentiation of background and
23 foreground elements.
- 24 c. User Interface components does not have programmatic
25 information that is compatible with assistive technologies.

26 19. These inaccessible elements rendered the ostensibly "accessible"
27 elements inaccessible as a result of difficulty and confusion navigating the
28 numerous inaccessible elements. In other words, Plaintiff could not navigate

1 the website and gather the information he sought by using his SRS.

2 20. Currently, the defendants either fail to provide an accessible website or
3 Defendants have failed to maintain in working and useable conditions those
4 website features required to provide ready access to persons with disabilities.

5 21. Despite multiple attempts to access the Website using Plaintiff's
6 electronic device, Plaintiff has been denied the full use and enjoyment of the
7 facilities and services offered by Defendants as a result of the accessibility
8 barriers on the Website.

9 22. Plaintiff personally encountered accessibility barriers and has actual
10 knowledge of them.

11 23. By failing to provide an accessible website, the defendants denied
12 Plaintiff full and equal access to the facilities privileges or advantages offered
13 to their customers.

14 24. Plaintiff has been deterred from returning to the Website as a result of
15 these prior experiences.

16 25. The failure to provide accessible facilities created difficulty and
17 discomfort for the Plaintiff.

18 26. If the website had been constructed equally accessible to all individuals,
19 Plaintiff would have been able to navigate the Website and find information on
20 houses on sale.

21 27. Additionally, Plaintiff is a tester in this litigation and seeks future
22 compliance with all federal and state laws. Plaintiff will return to the Website
23 to avail himself of its services and to determine compliance with the disability
24 access laws once it is represented to him that Napa Valley Real Estate and
25 Vineyards and Website are accessible.

26 28. Plaintiff is currently deterred from doing so because of Plaintiff's
27 knowledge of the existing barriers and uncertainty about the existence of yet
28 other barriers on the Website. If the barriers are not removed, Plaintiff will

1 face unlawful and discriminatory barriers again.

2 29. The barriers identified above violate easily accessible, well-established
3 industry standard guidelines for making websites accessible to people with
4 visual-impairments that use SRS to access websites. Given the prevalence of
5 websites that have implemented these standards and created accessible
6 websites, it is readily achievable to construct an accessible website without
7 undue burden on Napa Valley Real Estate and Vineyards or a fundamental
8 alteration of the purpose of the Website.

9 30. Compliance with W3C Web Content Accessibility Guidelines
10 (“WCAG”) 2.0 AA standards is a viable remedy for these deficiencies and a
11 standard that has been adopted by California courts for website accessibility.

12 31. It’s been established that failure to remove these inaccessible conditions
13 violates the ADA and California law and requiring compliance with industry
14 access standards is a remedy available to the plaintiff.

15 32. The Website was intentionally designed, and based on information and
16 belief, it is the Defendants’ policy and practice to deny Plaintiff access to the
17 Website, and as a result, denies the services that are otherwise available to
18 patrons of Napa Valley Real Estate and Vineyards.

19 33. Due to the failure to construct and operate the website in line with
20 industry standards, Plaintiff has been denied equal access to Defendant’s Real
21 Estate and the various services, privileges, opportunities and benefits offered
22 to the public by Napa Valley Real Estate and Vineyards.

23 34. Given the nature of the barriers and violations alleged herein, the
24 plaintiff alleges, on information and belief, that there are other violations and
25 barriers on the website, and/or at Napa Valley Real Estate and Vineyards, that
26 relate to his disability. In addition to the barriers he personally encountered,
27 Plaintiff intends to seek removal of all barriers on the Website that relate to his
28 disability. See *Doran v. 7-Eleven* (9th Cir. 2008) 524 F.3d 1034 (holding that

1 once a plaintiff encounters one barrier, they can sue to have all barriers that
2 relate to their disability removed regardless of whether they personally
3 encountered the barrier).

4 35. Plaintiff will amend the complaint, to provide further notice regarding
5 the scope of the additional demanded remediation in the event additional
6 barriers are uncovered through discovery. However, please be on notice that
7 the plaintiff seeks to have all barriers related to his disability remedied.

8
9 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
10 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
11 Defendants.) (42 U.S.C. section 12101, et seq.)

12 36. Plaintiff re-pleads and incorporates by reference, as if fully set forth
13 again herein, the allegations contained in all prior paragraphs of this
14 complaint. Napa Valley Real Estate and Vineyards is a public accommodation
15 with the definition of Title III of the ADA, 42 USC § 12181.

16 37. The website provided by the Defendant is a service, privilege or
17 advantage and extension of Napa Valley Real Estate and Vineyards' physical
18 presence and terrestrial services.

19 38. When a business provides services such as a website, it must provide an
20 accessible website.

21 39. Here, an accessible website has not been provided. A failure to provide
22 an accessible website is unlawful discrimination against persons with
23 disabilities.

24 40. Under the ADA, it is an act of discrimination to fail to ensure that the
25 privileges, advantages, accommodations, facilities, goods and services of any
26 place of public accommodation is offered on a full and equal basis by anyone
27 who owns, leases, or operates a place of public accommodation. *See*: 42 U.S.C.
28 § 12182(a). Discrimination is defined, inter alia, as follows: "A failure to make

1 reasonable modifications in policies, practices, or procedures, when such
2 modifications are necessary to afford goods, services, facilities, privileges,
3 advantages, or accommodations to individuals with disabilities, unless the
4 accommodation would work a fundamental alteration of those services and
5 facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).”

6 41. Here, the failure to ensure that the accessible facilities were available
7 and ready to be used by the plaintiff is a violation of the law.

8 42. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
9 set forth and incorporated therein, Plaintiff requests relief as set forth below.

10
11 **PRAYER:**

12 Wherefore, Plaintiff prays that this Court award damages and provide
13 relief as follows:

14 1. A Declaratory Judgment that at the commencement of this action
15 Defendants were in violation of the requirements of the ADA due to
16 Defendants’ failures to take action to ensure that its Website was fully
17 accessible to and independently usable by blind and visually-impaired
18 individuals.

19 2. For equitable nominal damages for violation of civil rights. See
20 *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021) and any other equitable relief
21 the Court finds appropriate.

22 3. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction
23 enjoining Defendants from violating the ADA with respect to its Website.

24 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
25 to 42 U.S.C. § 12205; and *Cal. Civ. Code* § 52.

1 Dated: April 27, 2022 CENTER FOR DISABILITY ACCESS

2 By: //s// Mark Potter

3 Mark Potter, Esq.
4 Attorney for Plaintiff